

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Universal Service Board)	Docket No. 96-45
)	
Palmerton Telephone Company and)	WC Docket No. 08-71
North-eastern Pennsylvania Telephone Company)	
)	
Petition for Waiver of section 54.301(e)(1))	
Date for True-Ups of 2006 Local Switching)	
Support Data)	

**THE EX PARTE FILING OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC) submits this Ex Parte filing addressing the Comments and Reply Comments which support the May 22, 2008 Petition of Palmerton Telephone Company and North-Eastern Telephone Company (the Pennsylvania Petitioners) for waiver of Section 54.301(e)(1a) of the FCC's regulations.¹ On June 6, 2008, the FCC issued notice soliciting Comments and Reply Comments on the Pennsylvania Petitioners' request by July 7, 2008 and July 22, 2008, respectively.

The PaPUC Ex Parte Comments

The PaPUC appreciates the opportunity to address the Comments and Reply Comments supporting the Pennsylvania Petitioners' request. The

¹ The FCC's rules address the submission of true-data for USF support. Those rules require each incumbent local exchange carrier that is an Eligible Telecommunications Carrier (ETC) and which serves a study area with 50,000 or fewer access lines must, for each study area, provide the USF Administrator (NECA) with the historical total unseparated dollar amount assigned to each account listed in the rules (paragraph (b)) for each calendar year no later than 12 months after the end of each calendar year. 47 CFR § 54.301.

PaPUC Ex Parte filing should not be construed as binding on the PaPUC or individual commissioner in any proceeding before the PaPUC.

The PaPUC supports the Comments and Reply Comments because they correctly note that that Section 3.1 of the FCC's rules authorize the FCC to waive a regulation for good cause shown. The FCC has waived the rules when the FCC concludes that the facts and circumstances make strict enforcement of any rule inconsistent with the public interest.² The FCC evaluates waiver requests in light of the hardship attributable to strict enforcement and equity.³

The PaPUC supports the Comments and Reply Comments filed in support of the waiver of 47 CFR 54.301 under Section 3.1 as consistent with the FCC's precedent. The PaPUC agrees that the circumstances support a waiver.

In their request, the Pennsylvania Petitioners note that they are small rural telephone companies that filed their 2006 LSS data late due to a unique set of circumstances involving pool participation and miscommunication between ICORE (their consultant, a Pennsylvania consultant with considerable expertise and experience) and NECA (National Exchange Carrier Association). Importantly, the Pennsylvania Petitioners note that failure to grant a waiver makes them ineligible for approximately \$324,354 and \$382,123, respectively, in expected LSS for 2006.⁴

² *Northeast Cellular Telephone Company v. FCC*, 896 F.2d 1164, 1166 (D.C.Cir 1990).

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *cert denied* 409 U.S. 1027 (1972).

⁴ Pennsylvania Petitioners, p. 7.

The Comments and Reply Comments filed in support of the waiver note that the Pennsylvania Petitioners explained that in 2006 they were not part of the NECA Traffic Sensitive Pool but changed their status and joined that pool in 2007 before the deadline for filing the LSS true-up data.⁵ The transition to that pool and communications between NECA and ICORE indicate that the failure to submit a timely filing was the result of inadvertent human error. A decision to minimize federal USF costs through a decision to join a pooling arrangement that produces an unintended harm because of human error should not be subject to strict enforcement of the federal rule. Moreover, the PaPUC suggests that this error was unique, understandable, and is not likely to occur regularly given the consultant's and NECA's familiarity with the federal USF. A waiver is appropriate because without it the Pennsylvania Petitioners would be ineligible to receive High Cost support that they would get but for this inadvertent error.

Finally, the PaPUC supports this request even though Pennsylvania is a net contributor to the federal USF. The PaPUC is particularly concerned that denial of the waiver would impose a hardship on the Pennsylvania Petitioners that would likely be reflected in their ability to provide local exchange and access service at affordable rates to rural Pennsylvanians. Federal USF support enhances the Pennsylvania Petitioners' ability to continue providing service to 10,580 and 11,947 access lines, respectively.⁶

For these reasons, the PaPUC supports those Comments and Reply Comments which urge the FCC to act promptly in granting the waiver. An inadvertent error by experienced advisors is no basis for denying support to

⁵ Pennsylvania Petitioners, pp. 2-4.

⁶ Pennsylvania Petitioners, p.3.

Pennsylvania Petitioners that could ultimately harm service for rural Pennsylvanians.

Respectfully submitted,
Pennsylvania Public Utility Commission

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